



**COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION
ON DRAFT GAP ANALYSIS/CHOICE ACTION PLAN
*November 13, 2018***

The Retail Energy Supply Association¹ (“RESA”) is pleased to provide comments on the Draft Gap Analysis/Choice Action Plan (“Draft Report”) issued by the Commission’s Customer Choice Project team on October 23, 2018. RESA commends the project team for its careful analysis and assessment of key issues related to customer protection, duty to serve and reliability/resource procurement. In general, RESA concurs with the gaps identified and recommended actions. With the following comments, RESA identifies topics that would benefit from additional discussion in the Draft Report.

CONSUMER PROTECTION/DUTY TO SERVE

Topic: Provider of Last Resort (POLR)

As RESA has noted in its previous comments, customers have clearly and consistently expressed their desires for choice. Customers want more than a choice for additional renewable power beyond their default product. They may want the ability to find a rate plan that meets their precise needs, provides free power at certain times of the day, enables full use of their own energy management tools, or permits them to participate in the wholesale energy market. All of

¹ The comments expressed herein represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

these options are readily available to customers elsewhere. California and this Commission can now lead the way in providing full retail choice to California consumers.

Properly designed POLR service can be an important tool in facilitating customer choice. However, the discussion of the POLR “Issue” in the Draft Report focuses on ensuring cost recovery and the discussion of the “Nature of Gap” focuses on POLR service for customers of failed retail providers.² Yet, POLR service can be designed to facilitate the ability of customers to move quickly and simply among retail service providers. RESA recommends that the section in the POLR discussion on the proposed “policy analysis” be expanded to include consideration of this broader version of POLR.

DUTY TO SERVE

New Topic: Senate Bill 237

Senate Bill (“SB”) 237³ was signed into law in September after the final Green Book was published. This significant bill not only expands the cap on direct access service by 4,000 GWh by no later than June 1, 2019, but also requires the Commission to make recommendations to the Legislature by June 1, 2020 to implement further re-opening of direct access service for all non-residential customers. The Commission can most quickly implement the new cap by employing the existing waiting list process. No additional regulatory action should be required other than Commission action to increase the caps established by utility service area in D.10-03-022. As noted in Draft Report, customers representing more than 7,500 GWh currently reside on the waiting list,⁴ so this additional cap space would permit more customers to move to direct access service off the waiting list. To develop the required recommendations to the Legislature for the

² Draft Report, pp. 21 and 22.

³ Stats. 2018, Ch. 600.

⁴ Draft Report, p. 60.

future re-opening of direct access service, the Commission could initiate a new rulemaking or re-open Rulemaking 07-05-025, which first established the caps on direct access service adopted in SB 695.⁵ RESA recommends that further re-opening of the direct access market pursuant to SB 237 be added as a new topic under “Duty to Serve.”

CONSUMER PROTECTION

Topic: Predatory Sales Tactics -- Electric Service Providers (ESPs) and Core Transport Agents (CTAs)

RESA fully supports robust customer protection rules and RESA’s previous comments have detailed the Commission’s significant customer protection rules for ESPs and direct access customers that have been implemented over the last 20 years.⁶ RESA is unaware of any consumer protection issues involving ESPs in recent times and several ESPs have transitioned out of the California market in an orderly fashion. However, the Draft Report lists “predatory sales tactics” by ESPs as a customer protection issue,⁷ even while concluding that “[s]lamming and cramming has not been an issue to date” for ESPs.⁸ RESA respectfully requests that the Commission revise the wording of this topic area to address the actual concern more accurately. For example, the Draft Report recommends regulatory action to “monitor conduct of ESPs and CTAs and other retail providers.”⁹ RESA concurs with this recommendation and suggests that the topic area be re-worded to conform to this planned regulatory activity by the Commission. Proposed revisions are provided in the Appendix.

⁵ Stats. 2009, Ch. 337.

⁶ See, for example, RESA’s comments on the June 22, 2018 Retail Choice *En Banc*, submitted July 11, 2018.

⁷ Draft Report, pp. 7, 24 and 75.

⁸ Draft Report, p. 24.

⁹ Draft Report, p. 25.

DUTY TO SERVE/RELIABILITY AND RESOURCE PROCUREMENT

Topic: Rate Design

The Draft Report highlights the importance of time-of-use (“TOU”) rates in encouraging customers to shift their energy use to support grid optimization and renewable integration.¹⁰ RESA concurs with this significant goal and notes that ESPs typically offer contracts to direct access customers that promote these same objectives. For example, ESPs hourly retail index pricing matches wholesale market pricing better than the TOU rate schedules offered by the utilities. Many commercial direct access customers take advantage of this index pricing to manage their electric use and costs more effectively. Also, fully deregulated markets like Texas offer widely popular residential TOU rate plans under which the electricity is priced low or even free during certain hours of the day. Such models are possible in a competitive market where the ESPs have access to smart meter data and an incentive to manage a customers’ load profile during certain hours of the day when market power prices are high. However, the discussion in “Nature of Gap” focuses solely on the IOUs and CCAs. RESA respectfully requests that the Draft Report be revised to add references to ESPs’ index pricing offers and typical TOU offers. Suggested revisions are provided in the Appendix.

RELIABILITY AND RESOURCE PROCUREMENT

Topic: Contracting for Reliability and Resource Requirements

The Draft Report properly identifies contracting for reliability resources as an important topic for the Action Plan. However, the discussion regarding the “central procurement entity” contains misleading and unsubstantiated assertions, which should be corrected.¹¹

The Draft Report states that retail competition is intended to use market forces to “lower

¹⁰ Draft Report, p. 38.

¹¹ Draft Report, p. 49.

costs for consumers.” In fact, retail competition is intended to use market forces to do much more than lower costs. Most importantly, retail competition spurs innovation, increases product offerings for consumers and, ultimately, facilitates the ability of consumers to take charge of their own energy use and supply, select suppliers of low-carbon and renewable electricity, and participate in wholesale energy markets. These customer choices all *accelerate* progress toward meeting California’s public policy goals while satisfying the needs of California’s consumers. RESA’s previous comments and submitted reports document and quantify these benefits, which derive directly from enhanced retail competition.¹²

Nevertheless, the Draft Report paints a very different picture of retail competition. It cites “lower costs for consumers” as the only benefit and describes “tension” between markets and decarbonization, arguing that markets “appear to conflict” with the state’s policy objective for decarbonization. No evidence has been provided to substantiate these statements and RESA knows of none. All load-serving entities under Commission jurisdiction meet the same resource adequacy, renewable portfolio standard and GHG emission reduction requirements. Retail competition does not *conflict*, but *enhances* options for customers, while meeting California’s policy objectives and statutory requirements. Permitting customers to *choose* does not diminish or otherwise impede these statutory requirements. Accordingly, RESA respectfully requests that the Draft Report be revised to correct these misstatements. Suggested revisions are provided in the Appendix.

¹² See, for example, RESA’s comments on the Retail Choice *En Banc* and White Paper, submitted June 16, 2017.

APPENDIX OF PROPOSED REDLINE CHANGES TO DRAFT REPORT

Predatory Sales Tactics, p. 24 (with similar revisions made to pp. 7 and 75):

CATEGORY: CONSUMER PROTECTION

TOPIC: PREDATORY SALES TACTICS BY ELECTRIC AND GAS RETAIL SERVICE PROVIDERS ~~(ELECTRIC) AND CORE TRANSPORT AGENTS (GAS)~~

Rate Design, Nature of Gap, p. 37:

Statutory limitations restrict the CPUC's ability to delve into solutions to ameliorate the impacts of the rapidly evolving electricity market. ~~Customers~~ While customers of some non-IOU LSEs are not incentivized to shift load according to TOU price signals, commercial customers of ESPs are offered attractive hourly retail index pricing, which matches wholesale market pricing better than TOU rates. Many direct access customers use such index pricing to manage their electric use effectively. In a competitive market, residential TOU rate plans are widely popular.

Customer Choice Action Recommendations, Additional Policy Analysis Needed, New Credit Proposals, Central Procurement Entity, p. 49:

Retail competition is intended to use market competition forces to provide improved options ~~lower costs~~ for consumers to meet their energy needs and drive costs down. However, the Legislature has ~~competing~~ goals to foster decarbonization of the economy through directed regulations, such as the RPS and IRP. The Commission should focus on ~~tension between~~ utilizing markets to achieve ~~lower costs and~~ state-based policy initiatives designed to foster decarbonization, ~~has to be harmonized;~~ at the present time, the multiple state policy objectives of efficiency of markets vs. decarbonization appear to conflict with each other on a practical, implementation level.